



Decision No. 2 of 2020

**Against Batelco for breach of the Consumer Protection Regulation
Misleading Advertisement**

Ref: LAD/0220/044

26 February 2020

Introduction

This Decision applies to Bahrain Telecommunications Company ("Batelco"), a licensed telecommunications company registered in the Kingdom of Bahrain, providing mobile and fixed services in addition to other licensed services. This Decision:

1. establishes that the Advertisement identified below is misleading within the scope of Chapter 3 of the Consumer Protection Regulation; and
2. orders Batelco to vary said advertising campaign.

Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Decision have the same meaning prescribed by the Telecommunications Law and / or the Consumer Protection Regulation (as applicable).

The decision to investigate

Legal provisions

By virtue of Article 3(b)(1) of the Telecommunications Law the Authority must carry out its duties in a manner best calculated to protect the interests of Subscribers and Users in respect of the tariffs charged for services.

Article 3(c)(2) of the Telecommunications Law empowers the Authority to, inter alia, monitor and investigate compliance with the provisions of the Telecommunications Law and any regulations, and to make such orders and determinations as are necessary to ensure compliance.

Article 3(c)(18) authorises the Authority to exercise all powers granted to it and to take all other actions as may be reasonably necessary to give effect to the Telecommunications Law.

Article 6(a) of the Consumer Protection Regulation requires Advertisers to ensure that Advertisements are fair, truthful and accurate, and that they do not, directly or by implication, mislead or confuse any Consumer.

Article 7(d) of the Consumer Protection Regulation requires Advertisers not to engage in Misleading Advertisement in particular with regard to the main features of the Applicable Product or Service, such as its availability and benefits.

Article 11 of the Consumer Protection Regulation sets out conditions that Advertisers must comply with in relation to expressions and statements used in Advertisements. Specifically Article 11(a)(i)

states that the expression “free” shall mean free and without any direct or indirect costs to the Consumer in obtaining the Applicable Product or Service.

On 19 February 2020, the Authority opened an own-initiative investigation into Batelco (“the Investigation”). The investigation was to examine Batelco’s compliance with Chapter 3 of the Consumer Protection Regulation.

Having considered the legal provisions above and in light of the Authority’s ex officio investigatory powers, the Authority opened an investigation into Batelco’s compliance with Chapter 3 of the Consumer Protection Regulation.

Investigation

Background

On 3 February 2020 Batelco posted an advertisement on its Instagram and twitter pages regarding its Fibre Home Internet package for 1.5 TB of data with the caption “Renew your Fibre Home Internet from Batelco for two years and get 1.5 TB of data. Visit your nearest Batelco shop. The Authority notes that the Advertisement itself (published in Arabic) translates to “renew your home broadband package and enjoy 1.5 TB for free”. T&Cs apply” and this is reproduced below (“Advertisement”):





جدد اشتراكك في إنترنت بتلكو فايبر المنزلي لمدة سنتين 🎉
واحصل على 1.5 تيرابايت من البيانات

! تفضل بزيارة أقرب فرع بتلكو أو shop.batelco.com
تطبق الشروط والأحكام

#بتلكو #البحرين



4:54 PM · Feb 3, 2020 · Twitter for iPhone

Initial assessment

Information which could trigger an own initiative investigation can come to the Authority's attention from a number of different sources, but more often than not through its routine monitoring of current offerings made by Licensees on their social media accounts. In these circumstances the Authority gathers publicly available information on a regular basis, and may seek further information if it deems necessary.

While the Authority normally, as part of its assessment, writes to a Licensee(s) whose conduct it is investigating to provide them the opportunity to comment, the Authority considered that it already had sufficient information based on the information publicly available to it and based on a previous engagement with Batelco about a similar matter¹. If it finds that it has reasonable grounds to do so, the Authority pursues enforcement action against Licensees in respect of non-

¹ Batelco's complaint against stc Bahrain dated 26 January 2020

compliance with regulatory obligations to prevent harm to Users of telecommunications services, competition, and to other Licensees.

In light of the information available to it, the Authority opened an investigation into Batelco's compliance with Chapter 3 of the Consumer Protection Regulation.

Legal analysis

The starting point of the Authority's analysis was to identify Batelco's current home broadband packages, so as to confirm that all available packages were eligible for a 1.5 TB of data upon renewal. A snapshot of Batelco's offerings for home broadband ("Superfast Fibre Package") is provided below:

| Superfast Fibre Packages | Monthly BD 15.75 | Monthly BD 21 | Monthly BD 42 | Monthly BD 157.5 |
|--------------------------|---------------------|--------------------|--------------------|---------------------|
| Package Speed | 20Mbps | 30Mbps | 100Mbps | 500Mbps |
| Upload Speed | 2Mbps | 5Mbps | 10Mbps | 50Mbps |
| Threshold (2 Yr) (GB) | 250GB | 300GB | 1TB | 1.5TB |
| | Unlimited | Unlimited | Unlimited | Unlimited |
| Throttling Speed* | 2Mb | 2Mb | 5Mb | 50Mb |
| Bahrain Wi-Fi access** | FREE | FREE | FREE | FREE |
| YouTube | x | x | ∞ Unlimited | ∞ Unlimited |
| Weekend Internet | x | x | ∞ Unlimited | ∞ Unlimited |
| Unlimited Usage | BD 50 / month | BD 50 / month | BD 50 / month | BD 50 / month |
| Unlimited Netflix | BD 5 / 250 / month | BD 5 / 250 / month | BD 5 / 250 / month | BD 5 / 250 / month |
| Registration Fees | BD 10.5 | BD 10.5 | BD 10.5 | BD 10.5 |

Upon the Authority's investigation, it transpired that only one category of subscribers is eligible to benefit from the 1.5 TB of data offer – specifically the subscribers who subscribe to the Superfast Fibre Package for a monthly rate of BHD 157.5. For example, if a subscriber was on the cheapest

Superfast Fibre Package (for BHD 15.75 per month) and wished to renew this package for another term of two years, said subscriber would not automatically benefit from 1.5 TB of data “for free” as the Advertisement suggests.

The misleading nature of the Advertisement

The Consumer Protection Regulation defines ‘Misleading Advertisement’ as *an Advertisement which contains information, statements, or visual presentation which directly or by implication is likely to mislead or deceive the Consumer about an Applicable Product or Service.*

According to Article 6(a) of the Consumer Protection Regulation titled ‘Obligations of Advertisers’, *Advertisers shall ensure that:*

(a) Advertisements are fair, truthful and accurate, and shall not, directly or by implication, mislead or confuse any Consumer.

The Authority considers that advertisements may be capable of misleading consumers if they misrepresent the price of a product / service (or the way in which it is calculated, or the conditions by which it is made available) in a way that affects the purchasing decision of a consumer. Such misrepresentation may result from providing inaccurate or false information, or information that is otherwise capable of persuading the targeted audience that the product / service at hand presents an advantage that, in reality, it lacks. Such misrepresentation may also result from a partial disclosure of the information relating to the product or service at stake, when the information omitted may allow consumers to reach a better understanding of the characteristics of the offer to which it refers and to adopt purchasing decisions accordingly. Indeed, an advertisement can mislead by unspoken implication as well as by false or inaccurate representations. This may occur, for example, when only part of the truth is told, while unfavourable information that would discredit or contradict the affirmative statements is withheld.²

Finally, the Authority discourages Advertisers from designing advertisements that are capable of misleading consumers by attracting them not based on the actual merits of a particular product / service, but rather on the claims the advertisement is suggesting. The Authority acknowledges that it is in the very nature of advertising to influence the purchasing decisions of consumers. However, the Authority wishes to highlight that advertising should not do so by providing (or omitting) information capable of misrepresenting the product / service being advertised, therefore misleading consumers into ill-informed purchasing decisions. The Authority expects Advertisers

² See: ASA ruling on Opodo Ltd (16 December 2015) complaint ref: A15-291574

not to create advertising campaigns which can mislead consumers by omitting material information. The Authority considers material information to be information that a reasonable consumer needs in order to make informed decisions in relation to an advertised product / service. As mentioned above, upon the Authority's investigation it transpired that only one category of subscribers may benefit from 1.5 TB of data "for free" upon renewal of their fibre packages, and they are those subscribed to the highest package of BHD 157.5 per month. The Authority considers this to be material information which has been omitted by Batelco in the Advertisement, and that the omission of this material information is likely to mislead consumers within the meaning of Article 6(1)(a) and Article 7(d) of the Consumer Protection Regulation.

Usage of the term "free"

The term "free", in its purest sense, means that consumers receive something for nothing: no money or other consideration (except, if applicable, the cost of postage or carriage, charges or reasonable travel required to collect the offer) passes from the consumer to the service provider. The Authority expects Advertisers not to describe any product or service as "free" or "without charge" or similar if a consumer has to pay anything other than the unavoidable cost of responding, collecting or paying the delivery of the same. Indeed, Article 11 of the Consumer Protection Regulation sets out conditions which Advertisers must comply with in relation to the usage of specific expressions and statements in advertisements. Article 11(a)(i) states that the expression "free" when used, must *"mean free and without any direct or indirect costs to the Consumer in obtaining the Applicable Product or Service"*. In addition to this, Article 10(1) of the Consumer Protection Regulation states that *"[a]n Advertiser shall not claim in any Advertisement that an Applicable Product or Service is on special offer, available free of charge, or available on any other preferential terms and conditions unless it is true and based on facts which can be substantiated."*

In light of the above, the Authority finds that Batelco's usage of the term "free" in the Advertisement breaches Articles 10 and 11(a)(i) of the Consumer Protection Regulation. It is factually incorrect for Batelco to claim that upon renewal of a Superfast Fibre Package, a subscriber may benefit from 1.5 TB of data "for free". Batelco must make clear in the Advertisement that subscribers who are subscribed to the highest Superfast Fibre Package offered by Batelco for BHD 157.5 are eligible to benefit from 1.5 TB "for free" upon renewal.

Reference to applicable terms and conditions

The Authority refers to Article 12(c) of the Consumer Protection Regulation which deals with exclusions and disclaimers in advertisements:

"The Advertiser shall ensure that:

(c) references to detailed terms and conditions in an Advertisement shall not have the effect of contradicting, materially qualifying or otherwise altering the basics of any claim made or implied in the Advertisement"

The Authority accepts that disclaimers and footnotes are used in order to further explain or qualify any headline / claim made in an advertisement. However, Advertisers ought to ensure that they only clarify, and do not contradict any claims made in an advertisement. Indeed Article 12(c) makes it clear that such references must not have the effect of contradicting, materially qualifying or altering the basics of any claims made / implied in an advertisement. Advertisers must ensure that they do not exclude key terms and conditions (in this case the existence and availability of a price advantage to a certain category of subscribers) from their advertisements, and instead merely reference in the advertisement an asterisk or small print reference to the fact that terms and conditions apply. The Authority believes that it is likely that consumers would gain an impression from the Advertisement that upon renewal of (any) home broadband package they would be entitled to 1.5 TB of data for free, when in fact only a certain category of subscribers (those who are subscribed to the higher, more expensive home broadband package) are eligible for this. Finally, the Authority believes that the condition requiring subscribers to be subscribed to certain home broadband packages is considered essential and is not sufficiently brought to the attention of subscribers. The Authority expects that Batelco make it clear in the BTC Advertisement that the offer applies to those subscribed to the highest package of BHD 157.5 per month. As such, the Authority does not believe that the requirement in Article 12(c) has been satisfied by Batelco.

Conclusion

After reviewing the Advertisement and all related legal instruments, the Authority considers the Advertisement to be misleading, and finds that it falls within the scope of Misleading Advertising as set out in Chapter 3 of the Consumer Protection Regulation.

Decision

In light of the above, the Authority requires Batelco to vary the Advertisement from all media outlets and Advertising Means within seven (7) days from the date of this Decision.

The Authority reserves all its rights in respect of the matter including but not limited to its right to take further action pursuant to Article 35 of the Telecommunications Law.



Nasser bin Mohamed Al-Khalifa
Acting General Director
For the Telecommunications Regulatory Authority

26 February 2020